**From:** James M. Frisby
**To:** Microsoft ATR
**Date:** 1/24/02 1:45am
**Subject:** Microsoft Settlement

To Whom It May Concern:

As a professional software developer and a concerned citizen, I wish to state my opposition to the Revised Proposed Final Judgement (RPFJ) in the Microsoft anti-trust case. While I believe it has several deficiencies, one I find particularly disconcerting is within the "multi-boot" provisions (RPFJ, III(A)(2) and III(C)(4)). Certainly, I applaud the efforts of the Department of Justice to craft these provisions, since allowing multi-boot machines would help to restore competition in the operating system (OS) market. I nevertheless believe they suffer from a fatal flaw (and possibly two) which will render them toothless.

The multi-boot provisions state only that Microsoft must not "retaliate against" OEMs who wish to sell a multi-boot system; or contractually prohibit an OEM from selling a multi-boot system. There is no provision forbidding Microsoft from altering its OS in such a way that it can detect and disable non-Microsoft OSes, or to disable itself until either the OEM or the user removes any non-Microsoft OSes.* Given the District Court's findings and conclusions that Microsoft has created such deliberate technical incompatibilities in the past (Findings of Fact, VI(A); Conclusions of Law, I(A)(2)(b)), any settlement which does not prohibit such means of subverting competition necessarily fails to secure for the public a choice in OSes.

Also, on December 11, 2001, Microsoft was granted U.S. Patent number 6,300,670, for a "Digital Rights Management Operating System" (DRMOS). Any PC created by an OEM which implements this patent** will, by design, refuse to boot an OS that is not a DRMOS. Since Microsoft holds this patent, it will be in the position of deciding which non-Microsoft OSes it will permit to multi-boot on a PC implementing DRMOS.

While I realize there is a provision requiring Microsoft to license intellectual property on "reasonable and non-discriminatory" terms (RPFJ, III(I)(1)), there is also an explicit exemption with regard to DRM (RPFJ, III(J)(1) (and possibly III(J)(2); "anti-piracy systems" and "license enforcement mechanisms" might be construed to mean the same thing as "digital rights management")). Since the DRMOS patent was not awarded until over a month after the RPFJ was submitted to the Court, it seems reasonable that these provisions should be, at a minimum, re-examined to determine the effect of the patent upon them.

For the foregoing reasons, I request that the Revised Proposed Final Judgement be withdrawn by the Department of Justice; or failing that, rejected by the Court.

Sincerely,

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* From a technical perspective, doing this would require either that Microsoft's OS is installed after the non-Microsoft OS; or failing that, that the Microsoft OS is booted at least once. Currently, Microsoft's

OSes already "hide" access to alternative OSes in the former case (by over-writing any pre-existing boot-loader). In the latter, Microsoft is free to contractually oblige the OEM to make its OS the "default" OS on any multi-boot system, virtually guaranteeing that it will boot at least once. Further, it is my lay opinion that RPFJ III(H)(3) will not prevent this behavior since it only covers OEMs' rights in III(C) (and not III(A)), and even then, only refers to "icons, shortcuts or menu entries", not boot-loaders.

** In the wake of Napster, there is ample evidence of growing pressure on OEMs to do just this from the private sector (in the form of the Recording Industry Association of America (RIAA) and the Motion Picture Association of America (MPAA)), as well as the public sector. In the former case, the MPAA and RIAA are looking to DVD and DVD-Audio, respectively, as a means of implementing hardware-based DRM, and are actively exploring software-based solutions. Some members of the RIAA have gone so far as to alter their compact discs in such a way that PCs can no longer play them. Since this devalues a PC for some users, it sends a clear signal to OEMs that DRM should become standard on all PCs.

On the public side, there is draft legislation in the Senate that would essentially mandate DRM in all consumer electronic devices. While draft legislation is a far cry from the full force of law, it sends a signal to the private sector that DRM is a topic of increasing importance within Congress, and not to be taken lightly. (Yes, hearings on the "Security Systems Standards and Certifications Act" (SSSCA) were indefinitely postponed after the events of September 11, 2001, but relatively mundane issues such as copyright infringement will eventually get Congress' attention again.)